

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Boston Edison Company

Docket Nos. ER01-890-004
ER01-890-005
ER02-1465-001
ER02-1465-002

ORDER ON REQUEST FOR REHEARING AND COMPLIANCE FILING

(Issued February 17, 2004)

1. This order addresses Boston Edison Company's (Boston Edison) request for rehearing of the Commission's letter order issued in this proceeding on May 31, 2002 (May 31, 2002 Letter Order).¹ The May 31, 2002 Letter Order conditionally accepted for filing a substitute executed interconnection agreement (executed IA) between Boston Edison and Sithe Mystic Development, now Exelon Mystic Development, LLC (Sithe/Exelon). This order also addresses the compliance filing submitted on July 3, 2002, by Boston Edison, pursuant to the May 31, 2002 Letter Order. As discussed below, we will dismiss as moot Boston Edison's request for rehearing and conditionally accept its compliance filing.
2. This order benefits the public by helping to ensure consistency among Commission orders addressing interconnection agreements.

I. Background

3. On January 4, 2001, in Docket No. ER01-890-000, Boston Edison filed an unexecuted interconnection agreement between itself and Sithe/Exelon (unexecuted IA). However, the parties disputed the terms of section 5.4 of the unexecuted IA, which governs redispatch cost responsibility. By order issued March 5, 2001 (March 5, 2001

¹ Boston Edison Company, 99 FERC ¶ 61,241 (2002).

Order), the Commission accepted the unexecuted IA for filing, suspended it for a nominal period to become effective March 6, 2001, subject to refund, and set section 5.4 for hearing.²

4. In the course of that proceeding, Boston Edison and Sithe/Exelon reached a settlement on issues regarding redispach cost responsibility and section 5.4 of the unexecuted IA. By letter order dated February 27, 2002 (February 27, 2002 Letter Order),³ the Commission approved the settlement and directed Boston Edison to file a substitute interconnection agreement reflecting the terms and conditions of the settlement agreement.

5. On March 28, 2002, pursuant to the February 27, 2002 Letter Order, Boston Edison filed the substitute, executed IA. The executed IA was filed in Docket Nos. ER01-890-003 and ER02-1465-000.

6. Sithe/Exelon protested section 5.6 of the executed IA, regarding the annual facilities charge (AFC). Section 5.6 states that, to the extent one or more of the interconnection facilities are new additions to a company's transmission system, not merely higher capacity replacements or upgrades of existing facilities, such new facilities shall be subject to an AFC for the full service life of Sithe/Exelon's generators. The section further provided that AFCs shall be calculated pursuant to Schedule 3 and shall apply to the percentage of each line item listed in Schedule 2 that is flagged by an asterisk.

7. Sithe/Exelon argued that section 5.6 was inconsistent with the Commission's decision in Boston Edison,⁴ concerning an interconnection agreement between Boston Edison and IDC Bellingham, LLC. Sithe/Exelon requested that, in rendering a determination regarding the executed IA, the Commission clarify whether its policy on operation and maintenance (O&M) charges for network upgrades, as stated in Boston Edison and further discussed below, would apply to all generators interconnecting with the Boston Edison transmission system.

8. As indicated above, in the May 31, 2002 Letter Order, the Commission accepted for filing the executed IA, subject to certain modifications. First, citing Commission

² Boston Edison Company, 94 FERC ¶ 61,236 (2001).

³ Boston Edison Company, 98 FERC ¶ 61,198 (2002).

⁴ Boston Edison Company, 98 FERC ¶ 61,200 (2002). This order issued on the same date as the February 27, 2002 Letter Order.

precedent,⁵ we directed Boston Edison to delete language from section 5.4, which stated that “to the extent that any court of competent jurisdiction rules that lost opportunity costs incurred by generators existing prior to installation of the Interconnection Facilities are to be imputed to the Company because of construction-related outages associated with this Agreement, Sithe shall indemnify the Company for all such costs.”

9. As relevant to Boston Edison’s rehearing request here, the Commission directed Boston Edison to revise section 5.6. Citing Boston Edison, 98 FERC at 61,696-97, the Commission stated that Boston Edison cannot impose on an interconnecting generator ongoing charges to operate and maintain facilities that are part of Boston Edison’s integrated transmission system. We directed Boston Edison to “revise section 5.6 to state that AFC will not be assessed for network upgrades and to delete, in Schedule 2, the asterisk from any line items that qualify as network upgrades.”⁶

II. Rehearing Request

10. On rehearing, Boston Edison argues that the Commission erred in ordering changes to section 5.6 of the Interconnection Agreement. Boston Edison contends that, as a result of the March 5, 2001 Order, in which the Commission conditionally accepted for filing the unexecuted IA and set for hearing only issues surrounding section 5.4, the Commission cannot direct changes to section 5.6 of the executed IA without initiating a proceeding under Section 206 of the Federal Power Act (FPA).⁷ Boston Edison maintains that the language of section 5.6 in the unexecuted IA and the executed IA is identical and that Sithe has been fully aware of its responsibilities under that section throughout these proceedings. Boston Edison argues that Sithe/Exelon should not have been allowed to raise new issues with respect to section 5.6 after the interconnection agreement had been negotiated and executed and construction of the subject interconnection facilities was 95 percent complete.

11. On May 7, 2003, Boston Edison filed supplemental request for rehearing. On June 13, 2003, Sithe/Exelon filed an answer to Boston Edison’s supplemental request. On July 10, 2003, Boston Edison filed a response to Sithe/Exelon’s answer. On July 22, 2003, Sithe/Exelon filed an answer to Boston Edison’s response.

⁵ See Cambridge Electric Company, et al., 95 FERC ¶ 61,339 (2001).

⁶ May 31 Letter Order, 99 FERC at 61,991.

⁷ 16 U.S.C. § 824e (2000).

A. Procedural Matters

12. Pursuant to Section 313(a) of the FPA,⁸ we will reject Boston Edison's supplemental request for rehearing and all corresponding answers. Section 313(a) requires requests for rehearing to be filed no later than 30 days after the issuance of the order. This statutory limitation precludes the Commission from considering late-filed supplements to a timely petition for rehearing.⁹ Although Boston Edison argues that its supplemental request is entirely consistent with its original rehearing request, we find, consistent with Commission precedent, that Boston Edison's supplemental request is in essence an untimely request for rehearing. Accordingly, we are without authority to consider it.¹⁰

B. Analysis

13. Upon further review of the executed IA and the May 31, 2002 Letter Order, the Commission finds that we erred in directing revisions to Section 5.6. In the May 31, 2002 Letter Order, we relied upon Boston Edison in ordering Boston Edison to modify section 5.6. As explained in Boston Edison, 98 FERC at 61,696-97, O&M charges cannot be assessed for facilities that are part of Boston Edison's integrated transmission system. However, we also found that section 5.6 of the interconnection agreement at issue in that case, which mirrors section 5.6 of the executed IA at issue here, did not conflict with that policy, since it subjected only non-integrated transmission facilities to the AFC.¹¹

14. Accordingly, upon further review, we will reverse our prior directive that Boston Edison modify section 5.6 of the executed IA. As discussed below with regard to Boston

⁸ 16 U.S.C. § 8251(a) (2000).

⁹ See, e.g., Commonwealth Electric Company v. Boston Edison Company, 46 FERC ¶ 61,253 at 61,757-58, order denying rehearing, 47 FERC ¶ 61,118 at 61,349-50 (1989) (Commonwealth Electric); Borough of Weatherly, 32 FERC ¶ 61,398 at 61,892 (1985).

¹⁰ Commonwealth Electric, 47 FERC at 61,349 (Commission consideration of late-filed supplement to rehearing request, which contains alleged newly discovered evidence, would violate the FPA, set a dangerous precedent and negatively affect the Commission's orderly processes and ability to resolve disputes).

¹¹ Id.

Edison's compliance filing, we will direct Boston Edison to submit a compliance filing restoring section 5.6 and Schedule 2 as originally proposed in the executed IA.

15. In light of the foregoing determination, we will dismiss as moot Boston Edison's request for rehearing.

III. Compliance Filing

16. On July 2, 2002, notwithstanding its rehearing request, Boston Edison filed in Docket Nos. ER02-1465-002 and ER01-890-005, a proposed, revised interconnection agreement between itself and Sithe/Exelon (proposed IA) in order to comply with the May 31, 2002 Letter Order. Boston Edison states that section 5.4 of the proposed IA deletes references to the assignment of the cost of redispatch. Boston Edison further maintains, however, that it reserves the right to amend this provision in the event that the Commission concludes in a standard interconnection agreement or elsewhere that it is appropriate for generators to bear the cost of redispatch that would not be incurred "but for" interconnection activities undertaken on behalf of the new generator.

17. Concerning section 5.6, Boston Edison states that the proposed IA eliminates AFC provisions that would otherwise assign to Sithe/Exelon responsibility for O&M expenses associated with new facilities built on Boston Edison's system as necessary to accommodate the interconnection.

18. Notice of the revised IA was published in the Federal Register,¹² with comments, protests, and interventions due on or before July 24, 2002. Sithe/Exelon filed a timely protest.

19. In its protest, Sithe/Exelon states that Boston Edison made the appropriate changes to section 5.6 in the proposed IA. However, Sithe/Exelon argues that, in violation of the May 31, 2002 Letter Order, Boston Edison failed to remove the asterisks from all of the network upgrades in Schedule 2. More specifically, Sithe/Exelon states that the proposed IA wrongfully retains the asterisk on three line items in Schedule 2: (1) the Sithe/Exelon Interconnection at Dexter Street; (2) 90 percent of the Sithe/Exelon Unit 9-3 115 kV Tie; and (3) 90 percent of the Sithe Unit 9-4 115 kV Tie.

20. On August 8, 2002, Boston Edison filed an answer to Sithe/Exelon's protest. Boston Edison states that its compliance filing properly characterizes the nature of the facilities at issue, including the three items enumerated above, and assigns to Sithe/Exelon an appropriate percentage of AFC responsibility for those facilities.

¹² 67 Fed. Reg. 47,783 (2002).

21. On August 28, 2002, Boston Edison and Sithe/Exelon filed a joint withdrawal of pleadings. In it, the parties state that they have agreed that, if the Commission decides in Sithe/Exelon's favor on Boston Edison's rehearing request, i.e., affirms that Sithe/Exelon will not pay AFC on network facilities, Boston Edison will determine the actual installed costs of the non-network portions of all new facilities included in the Sithe/Exelon interconnection, subject to the reconciliation and audit contemplated in section 5 of the executed IA, and will use such actual costs as the basis for the AFC calculations provided in Schedule 3. If, on the other hand, the Commission rules in Boston Edison's favor and finds that Schedule 2 to the executed IA should stand as originally filed, then the parties agree that the costs of each of the asterisked line items of Schedule 2, to the extent of the percentages indicated therein, will be used to calculate the AFCs. Such costs will be subject to reconciliation and audit.

Analysis

22. The Commission will conditionally accept for filing Boston Edison's proposed IA. As an initial matter, we will accept for filing section 5.4 of the proposed IA, concerning costs of redispatch. We find that the proposed revisions satisfy the requirements of the May 31, 2002 Letter Order. Indeed, Sithe/Exelon has raised no arguments to the contrary.

23. Further, given our determination with regard to Boston Edison's request for rehearing, we will dismiss as moot Boston Edison's proposed revisions pertaining to section 5.6. We will direct Boston Edison to submit a compliance filing, restoring section 5.6 and Schedule 2 as originally proposed in the executed IA

The Commission orders:

(A) Boston Edison's request for rehearing is hereby dismissed as moot, as discussed in the body of this order.

(B) Boston Edison's compliance filing is hereby conditionally accepted for filing, subject to Ordering Paragraph (C) below.

(C) Boston Edison is hereby directed to file, within 30 days of the date of this order, a compliance filing, restoring section 5.6 and Schedule 2 as originally proposed in the executed IA.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.